Decision **PROPOSED DECISION OF ALJ WEATHERFORD**
(Mailed 2/16/2016)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U-210W) for Authority to Modify Conservation and Rationing Rules, Rate Design, and Other Related Issues for the Monterey District.	Application 15-07-019 (Filed July 14, 2015)

DECISION ADOPTING SETTLEMENT AGREEMENT TO ELIMINATE SUMMER OUTDOOR WATERING ALLOTMENTS IN THE MONTEREY DISTRICT

Summary

This Phase 1 decision adopts a Settlement Agreement to eliminate the summer outdoor watering allotment for Tiers 3 and 4 in the Monterey District of the California-American Water Company, effective May 1, 2016. It also provides for direct notification to customers of such elimination. The decision takes effect immediately.

This proceeding remains open.

1. Background and Procedural History

1.1. State Water Resources Control Board Cease and Desist Order and California-American Water Company's Application 15-07-019

California–American Water Company (Cal-Am or applicant) is subject to State Water Resources Control Board (SWRCB) Cease and Desist Order (CDO) WR 95-10. CDO WR 95-10 requires the cessation of the utility's diversions of

Carmel River water by the end of 2016. Cal-Am seeks authorization in Application (A.) 12-04-019 to provide the necessary replacement water by constructing a desalination plant (the Monterey Peninsula Water Supply Project - MPWSP), with possible water purchases from the Pure Water Monterey Groundwater Replenishment Project.

In this application, Cal-Am seeks authorization to modify its conservation and rationing plan, rate design, and other related issues for the Monterey District. Its proposals here, according to Cal-Am, present a set of solutions that create a comprehensive approach to meeting the water production limitations of the Monterey District while simultaneously ensuring the company's ability to finance the MPWSP in a timely and economical fashion. To accomplish this, applicant first seeks a prompt elimination of the allotment for summer landscape watering. Specially, the Application, at 6, asks the Commission to:

> [i]ssue a decision by May 1, 2016, to eliminate all outdoor watering allotments from the rate design, consistent with the Governor's Executive Order B-29-15, SWRCB Resolutions 2015-0032, and Commission Resolutions [citing Commission Resolutions W-5000 (August 14, 2014), W-5034 (April 9, 2015), and W-5041 (May 7, 2015)].

1.2. Prehearing Conference and Scoping Memo

On September 8, 2015, a prehearing conference was conducted. On November 4, 2015, the assigned Commissioner's Scoping Memo and Ruling was filed. The Scoping Memo adopts the joint recommendation of eight parties to bifurcate the proceeding into two Phases. Phase 1 addresses the request for an expedited rate design change to eliminate summer outdoor watering allotments in the upper rate tiers. Phase 2 addresses all remaining issues.

1.3. Settlement Agreement, Evidentiary Hearings and Briefs

On December 16, 2015, several parties filed a Motion to Adopt a Phase 1 Settlement Agreement to Eliminate Summer Outdoor Watering Allotments.[1] The Settlement Agreement is in Attachment A. The dominant term of the Settlement Agreement is:

> The parties hereby agree that California American Water shall eliminate the summer outdoor watering allotment in the upper rate tiers 3 and 4 for the Monterey District, beginning May 1, 2016. (Settlement Agreement at Paragraph 2.1.)

The Settlement Agreement also provides that the rate impacts of the elimination may be raised in Phase 2 of this proceeding, and the impacts of the elimination may be reviewed in future Cal-Am general rate cases. (Settlement Agreement at Paragraphs 2.2 and 2.3). Finally, the Settlement Agreement specifies that Cal-Am will notify customers in the Monterey District of the elimination of outdoor watering allotments through direct mail, and the notice will include an example of how the elimination could impact the customer's total bill (showing allotments, rates, usage, charges, and total bill with and without the summer watering allotment). (Settlement Agreement at Paragraph 2. 4.)

Attachment B presents a brief summary of applicant's allotment system, including the portion at issue here. The portion here is only for residential customers. Applicant's system allots an exact amount of water to residential customers in each rate block based on specific customer characteristics, such as number of people residing in the household, and number of large animals. The

[1] The motion was filed on December 16, 2015 by five parties: Cal-Am, Coalition of Peninsula Businesses, Monterey Peninsula Water Management District (MPWMP), Office of Ratepayer Advocates (ORA), and Public Water Now (PWN). On January 19, 2016, a Notice to Withdraw from the Motion to Adopt a Settlement Agreement was filed by George T. Riley, as an individual and on behalf of PWN.

outdoor watering allotment is based on the size of the customer's lot, and is provided only in rate Tiers 3 and 4, and only in the months of May through October.

Evidentiary hearing was held on January 13, 2016 to receive Phase 1 evidence, and allow cross-examination of witnesses regarding Phase 1 testimony and the Settlement Agreement. On January 20, 2016, opening briefs were filed by five parties.[2] On January 25, 2016, reply briefs were filed by two parties.[3]

2. Discussion

We have considered the entirety of the Phase 1 record and the Settlement Agreement. Taken as a whole, we find the Settlement Agreement is a just and reasonable resolution of Phase 1 issues. In contrast, we determine that the recommendations of opposing parties are frequently outside the scope of the single issue in Phase 1 and, even if considered to the extent discussed below, are not compelling.

The Commission will not approve a settlement, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. (Rule 12.1(d) of the Commission's Rules of Practice and Procedure.) Settlements, however, are favored by the Commission when they meet these tests.[4] For the reasons stated below, we find the evidence supports the adoption of the Phase 1 Settlement Agreement.

2.1. Reasonable in light of the whole record

Applicant faces unique and urgent problems in the Monterey District, and expedited action is necessary to implement actions for summer 2016. The

[2] Opening briefs were filed by Cal-Am, ORA, and Public Trust Alliance (PTA), with a joint brief filed by Regulatory Liaisons (RL) and PWN (PNW; jointly referred to hereinafter as Joint Parties).
[3] Reply briefs were filed by Cal-Am and ORA.
[4] For example, see Decision 11-06-023.

Settlement Agreement is reasonable in light of the whole record because it takes into account the current unique and urgent situation in the Monterey District, and addresses the most time-sensitive issue in the proceeding in an expedited manner for implementation by May 1, 2016. The Settlement Agreement recognizes it is necessary to eliminate the summer outdoor water allotments because of the current drought conditions, the urgent need to conserve water, and to ensure compliance with the CDO. The testimony of Cal-Am, ORA and MPWMD all support the elimination of these allotments, recognizing both that the current outdoor watering allotments are inconsistent with the Governor's conservation goals, and that eliminating the allotments will align the price signals in Cal-Am's rates with California's conservation policy to discourage discretionary use of outdoor water.

Moreover, the Settlement Agreement is reasonable in light of the whole record by addressing ORA's concern regarding timely notice to customers about the impact of the modifications on their bills. It does this by Cal-Am's agreement to notify customers through direct mail, with clear information regarding effects with and without the summer watering allotment.

The Settlement Agreement also addresses party concerns about the rate and bill impacts of the elimination of summer outdoor water allotments in the upper tiers. It does this by ensuring that the rate impacts relative to rate design and total bills may be raised in Phase 2 of this proceeding as well as in applicant's future general rate cases.

The record does not support claims raised by opponents of the Settlement. For example, Joint Parties contend that applicant seeks to eliminate the allotment-based rate design because over-reporting of allotments drives revenue losses and high balances in the Water Revenue Adjustment Mechanism/

Modified Cost Balancing Account (WRAM/MCBA). To the contrary, applicant does not make this claim, and Joint Parties fail to provide a convincing citation to the record to show otherwise.

Joint Parties contend the desire to eliminate the allotments is driven by excessive claiming of allotments by customers, with failure by Cal-Am to adequately police self-reporting of eligibility for allotments by customers. Joint Parties conclude that the Settlement Agreement should be rejected because Cal-Am could use well-known data bases to verify allotments, thereby vacating the need to eliminate outdoor watering allotments in Tiers 3 and 4.[5]

In particular, joint parties assert that data bases can be used to verify allotments both initially and on an ongoing basis, with these data bases kept by Zillow, Multiple Listing Service, the Monterey County Property Assessor, the Internal Revenue Service, and the California Franchise Tax Board. According to joint

[5] Joint parties ask that the Commission "take Judicial Notice of these well-known Data Bases." (Joint Parties Opening Brief at 4.) This request is denied. The Commission may take official notice of matters that may be judicially noticed by California courts pursuant to Evidence Code Section 450, et seq. (Rule 13.9 of the Commission's Rules of Practice and Procedure.) Judicial notice shall be taken of some things (e.g., laws, rules). That is not the request here. Judicial notice may be taken of other things (e.g., decisional, constitutional, and statutory law; regulations; official acts; records and rules of courts), but those items are not requested here. Moreover, judicial notice may be taken only after notice and opportunity for adverse parties to meet the request. (Evidence Code Section 453.) Joint Parties have failed to provide adequate notice and opportunity for adverse parties to meet the request. Judicial notice shall be taken of "facts or propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute," (Evidence Code Section 451(f)) and may be taken of (a) "facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute" (Evidence Code Section 452(g)) and (b) "facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy" (Evidence Code Section 452(h).) We do not agree that we are either required or may take judicial notice of the items requested by Joint Parties. Nonetheless, even if we may be required, or might agree, to take notice of the "fact" that Zillow, Multiple Listing Service, the Monterey County Property Assessor, the Internal Revenue Service, and the California Franchise Tax Board exist and have data bases, that "fact" provides no useful information upon which to decide the issue in Phase 1. Joint Parties do not cite any portion of the Evidence Code in making their argument regarding the taking of judicial notice, and we find none that support their request.

parties, these data bases can be used in combination to verify the living capacity of the home, the number of residents reported on tax returns, the acreage of the property, whether the property is zoned for large animals, and to estimate the number of large animals.

To the contrary, the record fails to persuasively show that excessive reporting is a significant motivation for the proposed elimination. Rather, the need is to provide reasonable price signals to motivate customers to conserve during the drought, and in consideration of the unique water supply situation in the Monterey District.

Further, to the extent verification might be related to our decision (which we are not convinced it does), Joint Parties fail to demonstrate that any of these data bases or entities they cite would be available for the purpose of such verifications. Access is not necessarily available to confidential taxpayer information, for example. Even if the data bases are available, joint parties fail to present evidence of the costs to applicant of accessing such databases, developing verification software, and implementing the verification system. Nor do joint parties estimate the benefits of such system and compare it to the costs. In short, the record fails to support the contentions made by opponents of the Settlement Agreement.

Joint Parties contend that the current allotment based system sums allotments so that applicant can price water services nearly identically for all persons. (Joint Parties Opening Brief at 2.) Joint Parties conclude that this results in a just and reasonable system that should not be altered. To the contrary, the record shows the outdoor watering allotments allow customers with larger lot sizes to use increased amounts of water at reduced rates. (ORA Exhibit 101 at 2.) This results in customers with larger lot sizes receiving a benefit not received by

other customers. The record does not support the conclusion sought by Joint Parties that this is "identical" treatment.

Joint parties raise other points that are outside the scope of Phase 1, and are not reasonably considered here regarding whether or not to adopt the Settlement Agreement. We discuss this in more detail below. In summary, however, as said by applicant (Reply Brief, at 2-3, footnote omitted):

> The Joint Opening Brief improperly raises issues that are outside the scope of Phase 1 that should be disregarded by the Commission. The Joint Opening Brief raises its arguments against the overall proposal to eliminate allotment-based rate design repeatedly, under the guise of discussing the Phase 1 elimination of summer outdoor watering allotments. The Joint Opening Brief opines on the verification of allotments, mischaracterizes California American Water's rationale for eliminating allotments, discusses the recovery of the Water Revenue Adjustment Mechanism /Modified Cost Balancing Account ("WRAM/MCBA") under-collection, argues about lack of allotment verification in the Monterey District's Tariff Rule 14.1.1, and delves into the overall rate design for the Monterey District. None of these topics are in the scope of Phase 1. Furthermore, the Joint Opening Brief fails to make proper use of record evidence and repeatedly relies upon information that is not part of the record. The Joint Opening Brief points to sections of testimony that have not been offered by California American Water for this phase and also attempts to rely on new information that was not entered into the record during evidentiary hearings. The Joint Opening Brief loosely applies its discussions towards the Phase 1 elimination of outdoor watering allotments, but its arguments go far beyond the scope of Phase 1 and improperly rely on information not in the record, and should, therefore, be disregarded by the Commission.

2.2. Consistent with the Law

We find that the applied-for elimination of the summer outdoor watering allotment as consistent with law. In particular, the Prepared Testimony,[6] Rebuttal Testimony,[7] and Evidentiary Testimony of Cal-Am witness Sherrene Chew indicate that the proposed elimination meets legal mandates concerning water conservation, rationing and drought response promulgated by the Commission, local entities, and state government.

> There are allotments for outdoor usage provided in the current tier 3 and tier 4 rates during the summer season. Given the need to conserve and the requirements of the current and future conditions of the CDO, there should be no outdoor use allotments considered in the Monterey residential rate design. As such, we have requested that the outdoor water use allotment be eliminated on an expedited basis to ensure compliance with the CDO and the State's expectation of reductions in water use during the drought. (Exhibit 5 at 11-12.)

> The goal in Cal-Am's opinion for the elimination of the summer allotments is in order to continue those strong conservation signals to customers along the Monterey Peninsula as well as being consistent with mandates from both our Governor and the State Water Board that have set forth targets for, you know, each of the areas to reach and also to deal with the ongoing water supply issues in Monterey. (Chew testimony, Reporter's Transcript at 47.)

2.3. In the Public Interest

The Settlement Agreement is in the public interest. It eliminates a key impediment to further conservation in the Monterey District in time to positively impact summer 2016 water usage. It provides for timely notice to customers

[6] Exhibit 5 (Direct Testimony of Sherrene P. Chew at p.2, l.13 through p.3, l.21; at p.12, l. 1-6; p. 14, l. 2 through p.15, l.3.)
[7] Exhibit 3 (Rebuttal Testimony of Sherrene P. Chew at 8.

about the impact of the modifications on their bills. It addresses concerns about the impacts of the elimination of summer outdoor water allotments in the upper tiers by ensuring that the rate impacts relative to rate design and total bills may be raised in Phase 2 of this proceeding as well as in applicant's future general rate cases. It achieves greater equity among applicant's customers, and aligns applicant's rate design price signals with the Monterey Peninsula's conservation needs. It provides a reasonable resolution of contested issues, saves unnecessary litigation costs among settling parties, and conserves Commission resources. It supports the state's drought response and water conservation efforts and, therefore, is in the public interest.

3. Competing Views of What Constitutes the Record

3.1. Regulatory Liaisons' Out of Phase Participation

RL opposed the five-party Settlement in the Prepared Testimony of its representative, Mr. Burke. He made an unscheduled statement of RL's "case" at the evidentiary hearing and that statement, regarding which the other Parties were given, but declined, the opportunity to cross-examine. It appears from the Joint Parties' brief that RL erroneously assumes that material presented in briefs after the evidentiary hearing but not offered at the hearing itself nonetheless is part of the evidentiary record on which a decision can be based. Such an assumption is particularly unwarranted here because a November 30, 2015 protocol ruling,[8] citing Article 13 of the Rules of Practice and Procedure, was issued that made it clear that evidentiary exhibits were to be presented at the hearing. Other guidance called for the exchange of exhibit lists before or at the

[8] *See* November 30, 2015 Administrative Law Judge's Ruling Concerning Hearing Procedures and Protocols.

outset of the evidentiary hearing.[9] While official notice was sought as to some facts, that offer did not qualify as evidence under Rule 13.9 of the Rules of Practice and Procedure (as discussed in this decision above).

3.2. Public Trust Alliance's (PTA) Excursions Outside The Scope Of Phase 1

PTA states that it does not take issue with the ultimate goal of eliminating the outdoor watering allotment for customers with large lots, but does take issue with aspects of the process at arriving at this decision in a bifurcated proceeding. In particular, PTA asserts that a "full, fair, and timely discussion of a water supply solution, including public trust principles" is avoided here by focusing only on a limited issue in Phase 1.[10]

To the contrary, ORA argues correctly that the PTA briefing on alternate water sources exceeds the scope of this proceeding set by the Application and Scoping Memo.[11]

> "PTA further asserts that these proceedings have not addressed the full dimension of the water supply issue. [Footnote omitted.] This assertion exceeds the scope of this proceeding. The purpose of Phase 1 is to determine whether the summer outdoor watering allotments should be eliminated. PTA's assertions regarding alternative water sources and water rights has no bearing on whether the summer outdoor watering allocations should be eliminated. Furthermore, PTA's discussion regarding alternative water sources and water rights demonstrate the need to limit discretionary use until Cal Am resolves its water supply issues. Continuance of discretionary usage is against the public interest as it sends the message that Monterey residents do not need to

[9] *See* November 30, 2015 Ruling at Attachment A, Item 8. A reminder was sent by e-mail from Judge Weatherford to the service list on January 8, 2016.

[10] PTA Opening Brief at 2.

[11] Exceedance of scope in this matter in no way speaks to the merits of transferring water from agricultural uses to urban, a recognized method of augmenting urban water supplies in the Western United States in recent decades.

conserve despite the water supply shortage in Monterey." (ORA Reply Brief at 4.)

PTA argues that environmental justice concerns arise from the proposed elimination of the watering allotment, particularly regarding differential impacts on customers with large properties, and suggesting that lower-tier/lower-income customers that live in multi-family housing might thereby "be assigned a greater portion of the cost of paying for the water supply project." (Opening Brief at 7.) The cost and cost allocation of the water supply project – the MPWSP – is beyond the scope of Phase 1.

PTA argues that federal and state laws require that the Commission consider environmental justice matters. PTA then argues that environmental justice concerns apply to "this project" and the populations affected by this project. (PTA Opening Brief at 12-16.) The project and the affected populations described by PTA are with regard to the MPWSP. Again, those matters are outside the scope of Phase 1.

Further, the discrimination and environmental justice arguments made by PTA[12] are outweighed in this Phase 1 stage by our finding that the elimination of summer residential outdoor watering avoids unreasonable discrimination[13] and meets the state mandates for reduction in water usage.

Finally, PTA's arguments concerning procedural efficiency[14] were foreclosed by Commissioner Florio's bifurcation of this matter into two phases in the November 4, 2015 Scoping Memo (at 8). PTA failed to make a timely motion to reconsider or amend the Scoping Memo. The reasonableness and urgency of considering the limited issue in Phase 1 to promote consistency with state conservation policy does not merit reconsideration of this matter now.

[12] PTA Opening Brief at 6-16.
[13] Conclusions of Law 2, 3 and 4.
[14] PTA Opening Brief at 3-6.

3.3. Cal-Am and MPWMP View of the Record

In their briefing, Cal-Am and MPWMD argue persuasively that most of RL's offers of proof, including material presented in the Joint Parties Opening Brief and Reply Brief, fall outside the record relevant for this Phase 1 decision. For example (Cal-Am Reply Brief at 1-2):

> …the Joint Opening Brief should be disregarded because it amounts to an improper attempt to argue issues that are outside the scope of Phase 1 and relies on unsupported arguments and on information that is not part of the record… [T]his reply brief demonstrates that the Joint Opening Brief is based upon meritless and unsupported allegations, that the Joint Opening Brief displays a fundamental misunderstanding about authorized revenue requirements and rate design, and that contrary to the Joint Opening Brief's claims, the proposal to eliminate summer outdoor watering allotments is consistent with the law. The Commission should reject this unreasonable attempt to obstruct the Phase 1 Settlement Agreement, disregard the unsupported and improper claims in the Joint Opening Brief, find the Phase 1 Settlement Agreement reasonable, consistent with law, and in the public interest, and adopt the Settlement Agreement without modification"

4. Conclusion

In sum, the Settlement Agreement is reasonable "in light of the whole record, consistent with law, and in the public interest" pursuant to Rule 12.1(d), and we adopt it here.

5. Comments On The Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's

Rules of Practice and Procedure. Comments were filed ~~on _____, and~~by PTA on March 7, 2016. No reply comments were filed ~~on _____, by _____~~.

PTA supports (Comment at 2-4) the elimination of the summer outdoor watering allotment and states it would have entered the Settlement Agreement but for the provision requiring signers to declare consistency with the law. PTA seeks the same assurance in this decision that was contained in the Settlement Agreement to the effect that "the resolution of Phase 1 does not preclude any party from raising the rate impacts" of the allotment elimination in Phase 2. The request invites unnecessary redundancy in that the decision here adopts the Settlement Agreement as is. That adoption makes it clear that PTA's concern above is being addressed.

Another "clarification" sought in PTA's Comment (at 3) is "language indicating that the structure of the proceedings is not intended, and may not be used, for piecemeal requests or to foreclose full consideration of all issues specified in the Scoping Memo and Ruling in Phase 2." We clarify here that the issues set out in the Assigned Commissioner's Scoping Memo and Ruling of November 4, 2015 (and not removed or modified by published rulings or decisions thereafter) are included in Phase 2. Issues modified by published rulings or decisions are also included as modified.

Finally, PTA repeats its concern that the elimination of the allotment, with its discriminatory features, furthers environmental justice principles and thus is within the scope of the proceeding, including Phase 1. (Comment at 4-6.) PTA first addresses the language in the proposed decision that some environmental justice concerns raised by PTA are outside the scope of Phase 1 because they relate to the MPWSP. PTA clarifies that it understands the MPWSP is outside the scope of the proceeding, and says the language was included for background.

While the clarification is useful, the proposed decision addresses the PTA brief as written, and we are not convinced that this clarification merits a change in the language in the body of the decision.

Second, PTA repeats its view that the environmental justice issue is within the scope of Phase 1 because environmental justice in PTA's view is "a ground of support from the proposal to eliminate the outdoor watering allotment for high-tier users..." (Comment at 5.) PTA concludes that it does "not believe that the environmental justice concern is in any way opposed or inconsistent with a finding that the elimination of summer residential outdoor watering avoids unreasonable discrimination. To the contrary, it supplements and bolsters that finding." (PTA Comment at 6.) We are not persuaded by PTA's comment that any language in the body of the decision must be modified.

6. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Gary Weatherford is the assigned ALJ in this proceeding.

Findings of Fact

1. California–American Water Company is subject to State Water Resources Control Board Cease and Desist Order WR 95-10. CDO WR 95-10 requires the cessation of the utility's diversions of Carmel River water by the end of 2016.
2. Cal-Am seeks authorization in A.12-04-019 to provide the necessary replacement water by constructing a desalination plant (the Monterey Peninsula Water Supply Project), with possible water purchases from the Pure Water Monterey Groundwater Replenishment Project.
3. In this Application, A.15-07-019, Cal-Am seeks authorization for modifications to its conservation and rationing plan, rate design, and other related issues.

4. Several parties entered a Phase 1 Settlement Agreement on December 16, 2015. The dominant term of the Settlement Agreement (at Paragraph 2.1) is that applicant shall eliminate the summer outdoor watering allotment in the upper rate Tiers 3 and 4 for the Monterey District, beginning May 1, 2016. It also provides that the impacts of such elimination may be in reviewed in Phase 2 of this proceeding, as well as applicant's future general rate cases. Further, it provides that applicant shall notify customers in its Monterey District of that elimination through direct mail.

5. On September 8, 2015, a prehearing conference was conducted, followed by Commissioner Florio's November 4, 2015 scoping memo and ruling.

6. In Phase 1, Parties disagree what is and is not part of the record on which this Decision can be based.

7. Applicant faces unique and urgent problems in its Monterey District, and the Settlement Agreement takes account of these problems, addresses the most time-sensitive issue in an expedited manner, recognizes it is necessary to eliminate summer outdoor watering allotments because of the current drought, ensures compliance with the CDO, is consistent with the state's conservation goal to discourage discretionary use of outdoor water, and improves the alignment of price signals in applicant's rates with California's conservation goals.

8. The Settlement Agreement addresses ORA's concerns regarding customer notice, and addresses parties' concerns that the rate and bill impacts of the elimination of summer outdoor water allotments may be raised in Phase 2 of this proceeding, and in applicant's future general rate cases.

9. The public interest is to promote conservation goals, provide reasonable notice to customers of Commission-adopted allotment changes, allow further consideration of the impacts of the allotment elimination in Phase 2 and in future

general rate cases, improve the alignment of applicant's rate design with conservation goals, to avoid unnecessary litigation costs among settling parties, and to support the state's drought response.

Conclusions of Law

1. Governor Brown's Executive Order B-29-15, the State Water Resources Control Board 2015-0032 and CPUC Resolution W-4976 (February 28, 2014) all call for the reduction in residential water use in light of California's prolonged drought.

2. Under Rules of Practice and Procedure 12.1(d), the Commission will not approve a settlement unless it is "reasonable in light of the whole record, consistent with the law, and in the public interest."

3. Section 451, Public Utilities Code, requires that all charges "demanded or received by any public utility…shall be just and reasonable;" further, that all "rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable." The elimination of summer outdoor residential watering allotments in the Monterey District is consistent with state anti-drought laws and policies requiring reduction in water usage, and is "just and reasonable" under Section 451.

4. Section 453, Public Utilities Code, provides: "(a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. (b) No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of ancestry, medical condition, marital status or change in marital status, occupation, or any characteristic listed or defined in Section 1113of the Government Code. A person who has exhausted all administrative remedies

with the commission may institute a suit for injunctive relief and reasonable attorney's fees in cases of an alleged violation of this subdivision. If successful in litigation, the prevailing party shall be awarded attorney's fees. (c) No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service. (d) No public utility shall include with any bill for services or commodities furnished any customer or subscriber any advertising or literature designed or intended (1) to promote the passage or defeat of a measure appearing on the ballot at any election whether local, statewide, or national, (2) to promote or defeat any candidate for nomination or election to any public office, (3) to promote or defeat the appointment of any person to any administrative or executive position in federal, state, or local government, or (4) to promote or defeat any change in federal, state, or local legislation or regulations. (e) The commission may determine any question of fact arising under this section." The elimination of summer outdoor residential watering allotments in the Monterey District does not make or grant any preferences, nor does it establish any unreasonable differences in rates, and is just and reasonable under Section 453.

5. Governor Brown issued Proclamation No. 1-17-2014 declaring a drought state of emergency. The Governor's Executive Order B-28-14 extended water conservation activities and his Executive Order B-29-2015 imposed a mandatory 25 percent reduction in urban potable water use statewide.

6. The Settlement Agreement is reasonable in light of the whole Phase 1 record, is consistent with law, and is in the public interest.

7. Today's Phase 1 Decision should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The December 16, 2015 motion to adopt the Phase 1 Settlement Agreement to eliminate summer outdoor watering allotments is granted.
2. The Settlement Agreement attached to this decision as Attachment A is approved.
3. Application 15-07-019 remains open to address the issues in Phase 2.

This order is effective today.

Dated _____, at San Francisco, California.

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